



Arkansas Department of Community Correction

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ADMINISTRATIVE DIRECTIVE: 07-19

OFFENDER RECORDS

TO: DEPARTMENT OF COMMUNITY CORRECTION EMPLOYEES

FROM: G. DAVID GUNTARP, DIRECTOR

SUPERSEDES: AD 01-10

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APPROVED: Signature on File

EFFECTIVE: DECEMBER 21, 2007

- I. APPLICABILITY.** This policy applies to all employees of the Department of Community Correction (DCC) and others who handle or have access to offender records, to include contractors, consultants, researchers, volunteers, and interns.
- II. POLICY.** Deputy Directors shall ensure a full and complete record is maintained for each offender under supervision or in custody. Offender records shall be protected from inspection or disclosure, copying or issuing except as authorized by law, DCC rules and regulations or by order of a court of competent jurisdiction. **(2-CO-1E-01, 2-CO-1E-06, 2-CO-1E-07; 4-ACRS-7D-08 and 4ACRS-7D-09)**
- III. DEFINITIONS.**
 - A. Disclosure of Records.** The act or process of making information from an offender record available.
 - B. Need to know.** The necessity of knowing, accessing or possessing information because it is critical to the performance of currently assigned job duties.
 - C. Offender Record.** Documents and electronic information pertaining to DCC's care, custody or supervision of an offender.
 - D. Patient.** For the purposes of this policy, "patient" means any individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program and includes any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a program. (Reference: 42 CFR § 2.11)

E. Patient Identifying Information (PID). The name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient in a drug or alcohol treatment program can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program, if that number does not consist of, or contain numbers which could be used to identify a patient with reasonable accuracy and speed from sources external to the program (such as a social security, or driver's license number).

F. Record Custodian. The person charged with primary responsibility for protection and maintenance of an offender record.

G. Record Transfer. The act or process of reassigning custody of a record from one authorized records custodian to another.

H. Record Retirement. Storage of paper files or records when they are no longer needed for routine use, such as after an offender completes his or her supervision at a CCC or on parole/probation.

IV. GUIDELINES. The DCC shall maintain a full and complete record for each offender under agency supervision. Whenever an area office or center has the capability to create electronic copies of documents, all offender information must be entered into e-OMIS or placed in e-OMIS as a "PDF" document. It is not necessary to maintain hard copies of documents that are accessible in e-OMIS or that are available from e-OMIS reports. The Information Technology Administrator must establish and maintain a master index identifying all residents committed or assigned to DCC. **(2-CO-1F-08)** This policy pertains to all offender case records, unless otherwise specified. The *Record Management* directive does *not* apply to offender records. **(3-3101)**

V. PROCEDURES.

A. Offender Record Protection and Disclosure. Offender records shall be protected from disclosure, copying, or inspection except as required by law, administrative regulation, or by order of a court. No offender's records may be released without a signed authorization or as authorized within the body of this policy.

1. Protection/Confidentiality of Offender Records. (2-CO-1E-08)

- a. Employees must follow policy guidance to ensure offender records are only provided to authorize persons.
- b. Employees must ensure offender records are stored in a way that provides reasonable protection from inappropriate access, or disclosure, theft, loss, or destruction. **(4-ACRS-7D-08)**
- c. Records custodians must have a system for tracking offender records which are temporarily transferred to another authorized person. Borrowed offender records should be promptly returned.
- d. Computerized records will be protected according to guidance in this policy and policy governing data and/or computer systems.

2. Disclosure. The following must be used in determining whether disclosure is appropriate.
- a. Disclosure is authorized by law, ordered by a court of competent jurisdiction or requested by the Arkansas Parole Board.
 - b. Disclosure is in accordance with a research plan approved by the DCC Director prior to the start of research.
 - c. Disclosure is made to an incarcerated offender's properly authorized legal representative following the receipt of a release form from the offender to whom the record pertains.
 - d. Disclosure is authorized to an offender to whom the record pertains, subject to any legal restrictions or concerns for safety, security or confidentiality.
 - e. Disclosure is authorized to criminal justice representatives or agencies when the information is needed for the performance of their duties.
 - f. Disclosure is authorized to representatives of the Arkansas Office of Child Support Enforcement when the information is needed for the performance of their duties.
 - g. Disclosure is authorized pursuant to a signed release form, subject to any legal restrictions or concerns for safety, security or confidentiality. Although this form is designed to allow release of "patient identifying information," it can also be used for general release of other offender record information.
 - h. Patient identifying information may be disclosed only as allowed under 42 CFR part 2 or relevant state statute.
 - i. Disclosure of medical, dental, mental health information is in accordance with contract health care provider policies. DCC staff may be given medical, dental, or mental health information when there is a "need to know." Other servicing health care or treatment program organizations may obtain medical, dental, or mental health information necessary to provide treatment in accordance with guidelines established by the contract health care provider's manual. These organizations may obtain information from DCC staff when AD 07-19, Form 2 has been completed. A copy of the form should be attached to release information; **(4-ACRS-7D-08)**
 - j. Disclosure on a "need to know" basis. Generally, based upon job duties and responsibilities, DCC employees have a right to information from offender records on a need to know basis. An employee may request verbal or written authorization from a requesting employee's supervisor before providing access to records when the "need to know" is not apparent.

- k. Information may be released to the public, provided that the public may only be given the following offender information, and only in accordance with the administrative directive on the Public Information Program and guidance in this policy:
 1. Offender name;
 2. Offender or case number;
 3. Conviction information;
 4. Date placed on, or discharged from, parole or probation;
 5. Date of birth;
 6. Race; and
 7. Sex.
3. Offender Access to Records. Offenders are not allowed access to their records during confinement in a DCC residential center. The offender's legal counsel may have access upon submission of the offender's authorization for release of information. Offenders under supervision may request to review their records and may challenge information they believe to be incorrect. If the information is erroneous, it will be removed in the presence of the offender. The review request should be made in writing and should be acted upon within seven days. The record custodian must closely supervise the offender during the record review, and may limit the review to 30 minutes. Offender access to records reviews can be limited to one review per three month period.

Before the record is reviewed by the offender, or the offender's legal counsel, the record custodian must remove information such as the following from offender access: **(4-ACRS-7D-08)**

- a. information which indicates or suggests names of witnesses, enemies, accomplices, victims or their families against whom the offender could retaliate,
- b. information received from other agencies under conditions where this agency is not allowed to disclose it without prior approval (e.g. patient identifying information which was obtained from another source),
- c. information from third parties when the disclosure could create a danger to the third party,
- d. psychological reports and information unless these records will be disclosed in person by the psychiatrist, psychologist, social worker, or licensed therapist.

B. Record Entries. All entries on paper documents in an offender's records must be signed or initialed and dated. **(4-ACRS-7D-08)**

C. Offender Photos. At every intake, a digital offender photograph must be taken and entered into eOMIS unless there is already a photo less than one year old in eOMIS. Offender photographs must be taken in front of a white measurement board with the exception of photographs taken at the Omega Technical Violator Center. Omega must take a photograph of every offender at intake, regardless of the age of existing photos in eOMIS, and must take photos in front of a yellow measurement board. A new photograph should be taken each year and whenever an offender's appearance changes substantially.

D. Intake. Offenders who are “patients,” as defined in this policy must be informed of the federal law protecting confidentiality. This must be done at the time of intake or as soon thereafter as the patient is capable of rational communication.

E. CCC Case Records Content. Attachment 1 lists minimum content for records at CCCs when those records are not available in the e-OMIS system. **(4-ACRS-6A-10, 4-ACRS-7D-07)**

F. Transfer of Resident Case Records. When a resident transfers to another facility, the updated resident case record must be transferred at the same time or at the latest within 72 hours. **(2-CO-1E-04; 4-ACRS-7D-10)**

G. Retirement and Destruction of Paper Offender Records.

1. Parolee and Probationer Case Records (Paper files). These records may be destroyed three years after the offender completes supervision, however, before destroying any record, the custodian of the record shall document the date and type of record. (Ark. Code Ann. § 13-4-301). **(3-3101)**
2. Clinical Files (Paper files). Retirement and destruction of clinical file records is addressed in the Clinical File Manual. Before destroying any record, the custodian of the record shall document the date and type of record. (Ark. Code Ann. § 13-4-301)
3. Resident Case Records.
 - a. Judicial Transfer Cases. Prior to transferring case records of offenders committed to the Arkansas Department of Correction (ADC) and judicially transferred to the DCC, the case record must be reviewed by the Records Supervisor to ensure proper content and forwarded to the ADC, Central Records Section,
 - b. Probation Plus Cases. Case Records for residents released to probation supervision should be retained on location for one year after release from the CCC. At the end of one year, files may be retired to the designated records holding area and retained three years. These records may be destroyed four years after the resident leaves CCC supervision, however, before destroying any record, the custodian of the record shall document the date and type of record. (Ark. Code Ann. § 13-4-301).
4. Acceptable means for destroying records are as follows:
 - a. transfer the documents to a credible recycling company that will guarantee document protection from disclosure until they are destroyed, or
 - b. shred the documents (after which they may be recycled or discarded with regular trash).

VI. ATTACHMENTS.

Attachment 1 Minimum Content for Case Records in Community Correction Centers
AD 07-19 Form 1 Release of Drug /Alcohol Treatment Information to Agencies or
Agency Representatives within the Criminal Justice System
AD 07-19 Form 2 Drug /Alcohol Treatment Information Disclosure

Arkansas Department of Community Correction

MINIMUM CONTENT FOR CASE RECORDS IN COMMUNITY CORRECTION CENTERS

	Resident Case Record	Clinical File or Treatment File	Medical or Dental Record	Mental Health Record	Grievance & Discipline Record
Initial intake information form*	X	X			
Commitment Order, judgment & disposition, conditions, PSI	X				
Case History & other information from the referral source*	X	X			
Case History/Social History*	X	X			
Medical Record*			X		
Individual Plan or Program*		X			
Signed Release of Information forms*	X	X			
Evaluation & Progress Notes*		X			
Current Employment Data (if employed)*	X	X			
Current Education Data*	X	X			
Program Rules & Disciplinary Policy, signed by Resident*	X				
Documented Legal Authority to Accept Resident*	X				
Grievance & Disciplinary Records*	X				X
Referrals to Other Agencies*	X		X	X	
Approved Visitation List*	VISITATION RECORD				
Final Discharge Report*	X				
Personal Property Inventory*	X				
Name, Address, Social Security Number	X	X	X	X	
Date of Birth; Gender	X	X	X	X	
Race or Ethnic Origin	X	X	X	X	
Reason for Referral		X			
Who to Notify in Case of an Emergency	X				
Referring Agency or Committing Authority	X				
Special Medical Problems or Needs			X		
Personal Physician, if Applicable			X		
Signature of both Interviewee & Interviewer (DCC Employee)	X	X			

* INFORMATION REQUIRED BY THE AMERICAN CORRECTIONAL ASSOCIATION STANDARDS

NOTE: Additional requirements may exist in other policy guidance.

Arkansas Department of Community Correction
RELEASE OF DRUG /ALCOHOL TREATMENT INFORMATION TO AGENCIES OR AGENCY
REPRESENTATIVES WITHIN THE CRIMINAL JUSTICE SYSTEM

CONFIDENTIAL

Prohibition Regarding Disclosure: This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR, part 2). The Federal rules prohibit you from making further disclosure of this information except with the specific written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, part 2. A general authorization for the release of medical or other information is not sufficient for this purpose. 42 CFR § 2.35 places the following restrictions on re-disclosure and use by elements of the criminal justice system: A person who receives patient information under this section may re-disclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

Instructions for DCC Staff: Complete this at intake for all offenders (residents, parolees, and probationers). Refer to the policy for additional guidance.

I, _____ Date of Birth: _____
(Print or Type Offender's Name)

Offender Number: _____

authorize: the Arkansas Department of Community Correction _____

to disclose the following drug/alcohol information: diagnosis, prognosis, attendance, cooperation, progress or lack thereof, and drug/alcohol test results. Information may be disclosed to individuals within the criminal justice system who have a need for the information in connection with their duty to monitor offender progress (e.g., disclosure by a residential center treatment staff member to a Resident Management Team member monitoring progress; disclosure by a residential center staff member to a Parole/Probation Officer so he/she may supervise/monitor progress; disclosure to a judge or other court employee in connection with their duty to monitor the offender's/patient's progress; disclosure to a prosecuting attorney who is withholding charges against the patient; or disclosure to a court granting pretrial or post-trial release.) (Reference 42 CFR, part 2)

The purpose for releasing information is to allow the requesting person within the criminal justice system to monitor progress and ensure appropriate supervision.

This authorization and consent are subject to revocation upon release from court-ordered supervision/confinement by the undersigned except to the extent that action has been taken in reliance thereon.

My signature also acknowledges the "notice to the offender regarding release of drug/alcohol treatment information" on the back of this form.

_____ Offender Signature	_____ Date	_____ Witness Signature
_____ Offender Printed Name	_____ Date	_____ Witness Printed Name

AD 07-19 Form 1

CONFIDENTIAL

Arkansas Department of Community Correction
NOTICE TO OFFENDER REGARDING
CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS

The confidentiality of alcohol and drug abuse patient records maintained by federally-supported alcohol or drug treatment programs is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program or disclose any information identifying a patient as an alcohol or drug abuser unless:

1. The patient consents in writing;
2. The disclosure is allowed by a court order; or
3. The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations. Federal law and regulations do not protect any information about a crime committed by an offender/patient either at the program or against any person who works for the program or about any threat to commit such a crime. Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities. (See 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 for Federal laws and 42 CFR part 2 for Federal regulations.)

Reference: 42 CFR § 2.22

Arkansas Department of Community Correction
OFFENDER DRUG/ALCOHOL TREATMENT INFORMATION DISCLOSURE
CONFIDENTIAL

PROHIBITION REGARDING DISCLOSURE:

Information attached to this document has been disclosed to you from records protected by Federal Confidentiality Rules (42 CFR part 2). The Federal rules prohibit you from making further disclosure of this information, except with the specific written consent of the person to whom it pertains, or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is not sufficient (according to statute) for this purpose.

INSTRUCTIONS FOR DCC STAFF: Refer to the pertinent policy for guidance.

I, _____ Date of Birth: _____
Resident's Name (Print)

DCC Number : _____ Do hereby authorize the Arkansas Department of Community Correction to disclose the following information (specify the nature & extent of information to be released):

NOTE: THE OFFENDER HAS CONTROL OF WHAT TYPE OF INFORMATION IS TO BE DISCLOSED.

- ☐ Diagnosis ☐ Prognosis ☐ Attendance ☐ Progress/Lack Thereof
☐ Cooperation ☐ Drug/Alcohol Test Results
☐ OTHER _____

TO: _____ for the following purpose:

Name of Person Requesting Information

☐ TREATMENT

Requesting Department or Agency

☐ OTHER _____

Street/Address

City State Zip Code

This authorization and consent are subject to revocation by the undersigned at any time, except to the extent that action has been taken in reliance thereon. If not otherwise revoked, this consent terminates and expires:

☐ Upon Release from Court-Ordered Supervision/Confinement

- or -

☐ OTHER (specify date, event, or condition): _____

My signature also acknowledges the "Notice to Offender Regarding Release of Drug/Alcohol Treatment Information," attached to this form.

Offender's Name (Print)

Date

Witness's Name (Print)

Signature of Offender

Date

Signature of Witness

CONFIDENTIAL

**NOTICE TO OFFENDER/PATIENT REGARDING CONFIDENTIALITY
OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS**

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Reference: 42 CFR § 2.22